

November 29, 2016

Subject: Background Check Requirements

LEAs and early childcare programs are encouraged to work with their board attorney to determine what steps need to be taken to ensure compliance with background check requirements under the law. We have provided some general guidance below to aid in the discussion:

General background checks requirements for K-12:

- **Applicants and employees:** T.C.A. § 49-5-413 mandates background checks (TBI and DCS check) for any individual applying for a position as a teacher, child care worker or other position requiring proximity to children.
- **Tennessee Bureau of Investigation (TBI) Checks:**
 - The components of the TBI background check include: (1) release of all investigative records for examination for the purpose of verifying the accuracy of criminal violation information as required by T.C.A. § 49-5-406(a)(1)(A); (2) A fingerprint sample and criminal history records check conducted by the Tennessee bureau of investigation.
 - Exceptions: Retired teachers and teachers hired before 2000. Prior to 2000, background checks were permissive. Therefore, it is at the discretion of the LEA whether to conduct background checks on employees hired before 2000.
 - While individuals who have committed certain offenses are prohibited from employment at schools, generally LEAs have discretion whether to hire based on the results of the background check. LEAs are encouraged to develop policies to determine when certain offenses should exclude an individual from working in a position. TDOE recommends interpreting “proximity to children” broadly and to include positions that require employees to be on campus when students are present (i.e. custodial and cafeteria positions).

- **Department of Children's Services (DCS) Checks:**
 - T.C.A. § 49-5-413(e) prohibits hiring OR RETAINING individuals identified by DCS as perpetrators of child abuse, severe child abuse, child sexual abuse, or child neglect.
 - LEAs must submit names of current employees and individuals who have been conditionally offered employment to DCS and receive results prior to hiring (applies to all employees, not just teachers).
 - Mandates cross checking names of potential hires with state's vulnerable persons and sexual offender registries.
- **Contractors:** T.C.A. § 49-5-413(d)(1)(A) mandates background checks for individuals with a contract with an LEA; direct contact with children; or access to school grounds when children are present. Checks for state contractors must be comparable and include an FBI check.
 - Exceptions: government personnel engaged in law enforcement, medical, or emergency services, utility service providers; delivery or pick-up service providers; contractors performing at school-sponsored activities attended by school officials
 - Red light/green light letters for private entities only provide limited information regarding certain offenses listed in the law. If contractors are providing direct services to students, LEAs are encouraged to require in the contract that the LEA conduct the background check or use the LEA's public OIR number.

Additional background check requirements for school-administered child care centers and school-age child care programs:

- Additional requirements apply to child care centers and school-age child care programs, including before and after school child care, under SBE Rule 0520-12-01-.04. The requirements below apply to all individuals who have contact with children in these programs, regardless of hire date or volunteer start date. This means programs must have a background check on file, as well as an updated background check every five years, for every person who has contact with children.
- Unlike the general rules for k-12 employees, school-administered child care program rules specifically exclude individuals with prohibited criminal or

abuse or neglect history from working, substituting, or volunteering in a program, or having any contact whatsoever with children.

- Individuals with the following are excluded from employment or access to children in the program:
 - Prohibited criminal history includes conviction, no-contest or guilty pleas, or any pending criminal actions or placement in pretrial diversion for offenses involving abuse or neglect of a child, violence, or drugs.
 - Listed on the Department of Health's Vulnerable Persons Registry.
 - Known to be a perpetrator of child abuse or child sexual abuse, or identified by the Department of Children's Services as a validated perpetrator of abuse of a child.
 - Individuals with pending criminal actions, convictions, or guilty pleas to offenses involving the use of a motor vehicle while under the influence of an intoxicant may not be employed or serve as a driver for a period of five years from the date of the conviction or guilty plea.
- Individuals identified by the Department of Children's Services as having neglected a child and who has not been criminally charged, convicted, or pled guilty, must be supervised by another adult while providing care for children.
- The federal Child Care and Development Block Grant Act, 42 U.S.C. § 9858(f), provides additional requirements:
 - Background checks for child care staff members must include a search of the following: State criminal and sex offender registry, and State-based child abuse and neglect registries, in the State where the individual resides and each State where they resided during the preceding 5 years, the National Crime Information Center, an FBI fingerprint check, and the National Sex Offender Registry.
 - Staff members, including those employed prior to the enactment of the Act, must submit to a criminal background check no less than once during each 5-year period.
 - Complete requirements can be found here:
<https://www.congress.gov/113/plaws/publ186/PLAW-113publ186.pdf>